HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1372 of 2006

Between:

Mohd. Khaja Moinuddin

... Appellant

And

A.P. Agricultural University represented by its Registrar.

... Respondent

::JUDGMENT::

Counsel for the appellant: Sri V. Srinivas

Counsel for the respondent: Sri Nagaiah for Sri B. Siva Reddy

January 02, 2007

Per G.S. Singhvi, CJ

This is appeal is directed against order dated 17-10-2006 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant for issue of a mandamus to Andhra Pradesh Agricultural University (now known as Acharya N.G.Ranga Agricultural University) (for short, 'the respondent University') to calculate his retiral benefits by fixing his pay in the pay scale prescribed for the post of Lab-Technician and to pay him salary in that scale for the period from 25-12-1977 to

12-2-1980 with interest at the market rate and also award of compensation on account of delayed payment of the retiral benefits.

The appellant joined the service of Osmania University in the year 1960 as Lab-Attendant. He was posted in the College of Veterinary Science and Animal Husbandry (hereinafter described as 'the college'). After three years, he was promoted as Lab-Technician. In 1965, the State Government decided to transfer the college to the respondent University. As a sequel to this, the appellant's services were transferred to the respondent University. He was appointed as Typist with effect from 11-1-1966. At the time of transfer, the appellant was drawing salary in the scale of Rs.110-7-180-9-225 prescribed for the post of Lab-Technician. Therefore, while fixing his pay in the scale prescribed for the post of Typist viz., Rs.90-5-150-7-192, the concerned authority ordered protection of his substantive pay of Rs.145/-. The appellant accepted appointment as Typist and fixation of pay in the scale of Rs.90-5-150-7-192 without any protest or objection.

While working as Typist at Maize Research Station, Amberpet, the appellant remained absent from 25-12-1977. This resulted in initiation of disciplinary action against him. Vide memo dated 28-6-1978, he was called upon to explain as to why disciplinary action may not be initiated against him. After considering his explanation, the competent authority passed order dated 25-3-1979 and imposed penalty of stoppage of increment for one year with cumulative effect on the appellant. Notwithstanding this, the appellant did not report for duty. Instead, he submitted an application for extension of leave from 1-4-1979 to 31-3-1980 as if he was already on sanctioned leave. His request was rejected and he was asked to join duty on or before 30-6-1979. He did not obey the command of the employer. Therefore, another departmental action was initiated against him and vide notice

dated 20-3-1982, he was called upon to show cause against his proposed removal from service. The appellant did not respond to the notice. Consequently, by an order dated 20-7-1982, the competent authority confirmed the proposed penalty. He challenged the same by filing an appeal wherein he made a request for being allowed to seek voluntary retirement with effect from 12-2-1980 on health grounds. The respondent University accepted his request. The period during which the appellant remained unauthorisedly absent was regularised by granting extraordinary leave. The appellant submitted pension papers on 20-8-1991, but his case could not be settled due to non-production of some documents. He submitted the required documents in June, 1992 and the pensionary benefits were sanctioned to him vide proceedings dated 16-5-1994. In September, 1994, he made representation for payment of retiral benefits by fixing his pay in the pay scale prescribed for the post of Lab-Technician and also for payment of salary for the period of unauthorised absence i.e. from 25-12-1977 to 11-2-1980. He also claimed interest and compensation in lieu of delay in the settlement of pension case. After some time, he filed Writ Petition No.19695 of 1995 for issue of a direction to the respondents to fix his pay in the pay scale prescribed for the post of Lab-Technician by contending that the action of the respondent University to fix his pay in the lower pay scale has resulted in violation of Articles 14 and 16 of the Constitution and the rules framed by the University. He also claimed retiral benefits on the basis of revised fixation of pay, salary for the period of unauthorised absence and interest and compensation on account of delayed settlement of his retiral benefits.

In the counter filed on behalf of the respondent University, it was pleaded that the petitioner's pay was fixed in the scale prescribed for the post of Typist because he had been appointed on

that post with effect from 11-1-1966. According to the University, the post of Lab-Technician and Typist belong to two different cadres i.e. subordinate service and ministerial service and, therefore, the services rendered by the petitioner in the cadre of Lab-Technician cannot be taken into consideration for the purpose of fixation of pay, seniority etc. in the cadre of Typist. It was further pleaded that the petitioner is not entitled to salary for the period of unauthorised absence, which was regularised by grant of extraordinary leave, because he had not worked during that period.

The learned Single Judge held that the petitioner is not entitled to fixation of pay in the scale prescribed for the post of Lab-Technician because he had accepted appointment on the post of Typist without any protest. The learned Single Judge further held that the delay in the payment of retiral dues was occasioned due to non-submission of the relevant documents by the petitioner and, therefore, the university cannot be burdened with interest etc.

Sri V.Srinivas, learned counsel for the appellant took us through proceedings dated 7-5-1966 issued by the Registrar of the respondent University, periodical increment certificates issued by the Principal of the college and argued that the learned Single Judge committed a serious error by declining relief to his client by wrongly presuming that he had voluntarily accepted the post of Typist. Sri Srinivas submitted that the appellant was appointed as Typist in the services of the respondent University by way of transfer because the college in which he was employed was transferred from Osmania University to the respondent University and he did not have any option but to accept the lower post. Learned counsel then argued that the appellant's joining the post of Typist without protest cannot lead to an inference that he had voluntarily accepted appointment on the lower post. He further argued that the appellant is entitled to

fixation of pay in the pay scale prescribed for the post of Lab-Technician because the University had protected the pay which he was drawing on the date of transfer and appointment as Typist. Shri V. Srinivas then submitted that the appellant is also entitled to get retiral benefits as per the revised fixation of his pay in the pay scale of the post of Lab-Technician.

In our opinion, there is no merit in the arguments of Sri V. Srinivas. A careful reading of proceedings dated 7-5-1966 issued by the Registrar of the respondent University shows that the appellant, who was then working as Lab-Technician in the college was transferred and appointed temporarily as Typist and his pay was fixed in the scale of Rs.90-5-150-7-192. While fixing his pay, the Principal of the college protected the pay he was drawing at the time of transfer. In the second periodical increment certificate, his pay was shown as fixed in the scale of Rs.90-5-150-7-192. This was also reflected in the pay fixation statement issued vide proceedings No.1359/AU(B.G.I)/70, dated 21-7-1970. The appellant did not challenge the fixation of his pay in the scale prescribed for the post of Typist. He represented for re-fixation of pay after a gap of almost 28 years. In the writ petition filed by him, the appellant did not explain the long time gap of almost 28 years between the fixation of his pay in the scale prescribed for the post of Typist and making of representation in September, 1994. Therefore, the inference drawn by the learned Single Judge that he had voluntarily accepted appointment on the post of Typist and fixation of pay in the scale prescribed for that post cannot be termed as incorrect.

We are further of the view that by having accepted the fixation of pay in the scale prescribed for the post of Typist on which he was appointed by transfer in January, 1966, the appellant will be deemed to have waived his right to seek fixation of pay in the scale prescribed

for the post of Lab-Technician and after a time gap of more than 40 years as on today, there is no legal justification for issue of a mandamus to the respondent University to fix his pay in the scale prescribed for the post of Lab-Technician with effect from 1966 and accordingly pay him retiral benefits.

There is another reason for our disinclination to entertain the appellant's prayer. Learned counsel for the appellant could not draw our attention to any statutory provision under which a person holding the post of a Typist (ministerial service) is entitled to fixation of pay in the scale prescribed for the post of Lab-Technician (subordinate service). In the absence of such rule etc., the Court cannot issue direction for fixation of the appellant's pay in the pay scale of the post of Lab-Technician by ignoring the fact that from 11-1-1966 to 25-12-1977 he held the post of Typist and actually discharged the duties of that post.

The appellant's prayer for issue of a direction to the respondent University to pay him salary for the period of unauthorised absence is wholly misconceived and the learned Single Judge rightly refused to entertain the same. The decision of the University to treat the period of unauthorised absence as extraordinary leave cannot entitle the appellant to claim salary for the period during which he had not worked.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.2872 of 2006 filed by the appellant for early hearing of the appeal is disposed of as infructuous.

G.S. SINGHVI, CJ

January 02, 2007

C.V. NAGARJUNA REDDY, J

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